Supreme Court, U.S.
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IN THE

SUPREME COURT OF THE UNITED STATES

October Term, 1979

No. 79-1752

JANICE ADAMS, et al.,

Petitioners,

vs.

THE UNITED STATES OF AMERICA, et al.,

Respondents.

REPLY TO BRIEF OF RESPONDENTS IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI To The United States Court of Appeals for the Eighth Circuit

ANTHONY J. SESTRIC
1015 Locust Street, Suite 601
St. Louis, Missouri 63101
(314) 241-8600
Attorney for Petitioners

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A R G U M E N T

The Respondent, Board of Education of the City of St. Louis, has filed no brief in opposition to the Petition for Writ of Certiorari and thus does not oppose the granting of the writ. The only opposition to the Petition for Writ comes from Respondent, United States. In arguing that this case presents no new issue of significance, the United States takes the position that the Eighth Circuit Court of Appeals made a fact finding determination that the desegregation plan of Respondent, Board of Education of the City of St. Louis, adopted in 1954 was not effective. It justifies the test to determine the effectiveness of the desegregation plan used by the Court of Appeals by claiming that the Board kept no records concerning race between 1954 and 1962. (Brief of the United States in Opposition, page 6.) It further quotes the Court of Appeals as saying, "All the avail-

able data demonstrates that little desegregation actually occurred in 1954-1956." (Brief of the United States in Opposition, page 7.)

If the Court of Appeals had examined "all the available data," it would have determined that in 1954-56, there was almost universal racial mixture in the schools, which racial mixture appears to be required by the Eighth Circuit's opinion in order to effect desegregation. A reading of the deposition of James Armstrong Scott, the individual who devised and prepared the desegregation plan, discloses that subsequent to the 1954 plan, there were few, if any, uniracial schools. Testimony was available from a number of individuals who testified that subsequent to the implementation of the plan, a significant number of pre-1954 uniracial schools housed multiracial student bodies. (Tr. 182-183; 1219; 3045-3096; and 5609.) Additionally the

housing statistics from the Public Housing Authority of the City of St. Louis disclose significant racial mixtures in the public housing projects between 1954 and 1962. (Pl. Exhibit A-24 and Exhibit N-169(c).) An examination of the racial composition of the inhabitants of the Public Housing Authority and the attendance boundaries which were drawn by Mr. Scott and exhibited in Plaintiff's Exhibit A-22 discloses significant racial mixture in the various schools serving the public housing projects.

The question of the effectiveness of the 1954-56 plan was resolved in 1963 in two suits between the Board of Education and the NAACP. (Plaintiff's Exhibits A-28 and A-29.) The clear record of this case discloses that prior to 1962 the attendance boundaries effectively desegregated the schools. The 1963 desegregation suit was dismissed voluntarily by all parties

because whatever remnant of the segregation that might have existed had been terminated by action of the Board in 1963.

Thus, for the Court of Appeals to have compared the 1954 and 1962 racial composition of the schools constituted the creation of a new test, and in the situation of the schools within the City of St. Louis, represented an erroneous test. Since data was available to examine the racial composition of schools in 1955-56, the use of 1962 data represents a new test used by the Circuit Court.

For the Court's convenience and assistance in this record, under Rule 13 of this Court, the Petitioners have requested that pertinent portions of the record before the Court of Appeals be certified.

Respondent, United States, also argues the issue of mootness by referring in general terms to the ultimate conclusion of both the District Court and the Court of

Appeals. Under Federal Rule of Procedure 52(a), neither the District Court nor the Court of Appeals cited or referred to any documentation or evidence to support the decision and determination of mootness. In the absence of any such determination, which is mandated by the Federal Rules, the decision of the District Court, affirmed by the Court of Appeals, in not supportable.

> ". . . The findings of fact must include as much of the subsidiary facts as necessary to disclose to the reviewing court the steps by which the trial court reached its ultimate conclusion on each factual issue." 9 Wright & Miller, Federal Practice & Procedure §2579.

Your Petitioners therefore respectfully request that the Petition for Writ of Certiorari be granted and that the writ issue.

Respectfully submitted,

ANTHONY J. SESTRIC
1015 Locust Street, Suite 601
St. Louis, Missouri 63101
(314) 241-8600
Attorney for Petitioners

CERTIFICATION OF SERVICE

I hereby certify that three (3) copies of the above and foregoing Reply to Brief of Respondents in Opposition to Petition for Writ of Certiorari has been served upon all parties hereto by depositing the same in the United States mail this 25th day of July, 1980, addressed as follows:

Mr. John Lashly
Mr. Paul Rava
Attorneys at Law
714 Locust Street
St. Louis, Missouri 63101
Attorneys for the Board of
Education of the City
of St. Louis, et al.

Mr. Wade H. McCree, Jr.
Solicitor General
Room 5614
Department of Justice
Washington, D.C. 20530
Attorney for the United States

I further certify that a copy has also been served upon the following attorneys, who represented parties in the consolidated appeal before the Eighth Circuit Court of Appeals, and which attorneys may have an interest in this Petition, by depositing the same, postage prepaid, in the United States mail this 25th day of July, 1980.

Mr. Joseph S. McDuffie
Mr. William P. Russell
Attorneys at Law
408 Olive Street, Suite 715
St. Louis, Missouri 63103
Attorneys for Craton Liddell,
et al.

Mr. J. Kent Lowry
Assistant Attorney General
Supreme Court Building
Jefferson City, Missouri 65101
Attorney for the State of
Missouri, et al.

Mr. Richard B. Fields
Ratner & Sugarmon
Attorneys at Law
525 Commerce Title Building
Memphis, Tennessee 28103
Attorney for the NAACP

Mr. Charles B. Kunderer
Klutho, Cody & Kilo
Attorneys at Law
1000 Oakview Place
St. Louis, Missouri 63110
Attorney for the City of
St. Louis.

Anthony J. Sestric

ANTHONY J. SESTRIC